



COMMONWEALTH OF KENTUCKY

DEPARTMENT OF PUBLIC ADVOCACY

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Department of Public Advocacy Comments on Execution Regulations and Continues Call for a Moratorium

(Frankfort, Kentucky, January 29, 2010) Today, the Department of Public Advocacy commented on the execution regulations proposed by the Department of Corrections. A copy of DPA's written comments are at: <http://dpa.ky.gov/>

DPA appreciates the proposed regulations clearly authorizing daily attorney contact. When an execution is imminent, time and client access to his attorney are critical regarding all legal matters. However, DPA has concerns about the proposed regulations. These concerns include a need to explicitly authorize:

- § Continuous "personal access" on the day the execution is scheduled by the client with his attorney as required by the Kentucky Supreme Court in *McQueen v. Parker*, 948 S.W.2d 121 (Ky. 1997);
- § Contact by agents of the attorney, including mental health professionals;
- § Bringing legal documents to the client in a confidential way.

DPA makes these and other comments on the regulations in light of the fact that public defenders represent the vast majority of clients on Kentucky's death row. Defenders play a critical role in ensuring full due process for their clients who have significant legal claims. People on death row are severely mentally ill, had lawyers who were ineffective, and who had trials resulting in serious errors that remain uncorrected.

These proposed regulations are before the people of the Commonwealth at a time when scrutiny of the administration of the death penalty is under way and after a history of an enormous number of errors in Kentucky capital cases.

Since 1967 Kentucky has executed 3 people (2 were volunteers) and 3 KY Governors have granted clemency to 5 people sentenced to death. Since 1976, 92 death sentences have been returned in Kentucky state courts. Currently, there are 35 people on KY's death row. Of the 50 KY capital cases that have exhausted review by the Kentucky Supreme Court and the Sixth Circuit Court of Appeals, 42 have been reversed.

An important independent objective review of the fairness and accuracy of Kentucky's death penalty system and its administration is taking place in Kentucky. In November 2009 the American Bar Association (ABA) Assessment Team composed of prominent Kentucky leaders met to begin the process for reviewing the way the death penalty in Kentucky has been administered against national standards.

"The error rate in KY capital cases over the last 33 years is stunning and unacceptably high," said Public Advocate Ed Monahan. "It is the leading reason that indicates the system is broken. The huge rate of error shows that the system cannot get it right. DPA continues to call for a moratorium since it will prevent any execution of an individual whose conviction and death sentence have been imposed by an unfair and arbitrary system. A moratorium is especially needed while the ABA does its assessment in Kentucky."

Information about capital cases in Kentucky is available at: <http://dpa.ky.gov/ci/dp.htm>

The Department of Public Advocacy is Kentucky's statewide public defender program providing full-time representation to indigent defendants in all 120 counties in over 148,000 cases a year.